

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE  
FLORIDA RULES OF CRIMINAL  
PROCEDURE AND FLORIDA RULE  
OF APPELLATE PROCEDURE 9.140.**

**CASE NO.: SC15-**

**CRIMINAL PROCEDURE RULES COMMITTEE  
AND APPELLATE COURT RULES COMMITTEE'S  
FAST TRACK REPORT**

Meredith Charbula, Chair of the Criminal Procedure Rules Committee (“CPRC”), the Honorable T. Kent Wetherell, II, Chair of the Appellate Court Rules Committee (“ACRC”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this out-of-cycle report, under Florida Rule of Judicial Administration 2.140(e).

All rule and form amendments have been approved by the full Committees and, as required by Florida Rule of Judicial Administration 2.140, reviewed by The Florida Bar Board of Governors. The voting records of the Committees and the Board of Governors are attached as Appendix A.

The Committees propose amendments to the following: Rule 3.220 Discovery; Rule 3.989 Affidavit, Petition, and Order to Expunge or Seal Forms; and Rule 9.140 Appeal Proceedings in Criminal Cases. The Criminal Rules Committee proposes two new rules: Rule 3.781 Sentencing Hearing to Consider the Imposition of a Life Sentence for Juvenile Offenders and Rule 3.802 Review of Sentences for Juvenile Offenders.

Proposed new Florida Rules of Criminal Procedure 3.781 and 3.802, as well as the amendment to Florida Rule of Appellate Procedure 9.140, were published in *The Florida Bar News* on February 15, 2015, and were posted on The Florida Bar’s website. (See Appendix D.) No comments were received. The statutory citation correction to Florida Rule of Criminal Procedure 3.989(g) and the amendment to

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Florida Rule of Criminal Procedure 3.220 were not published as the Committee wished to take action as soon as possible.

The specific changes suggested by the Committees are as follows:

**RULE 3.220. DISCOVERY**

The CPRC proposes adding a statutory reference to Florida Rule of Criminal Procedure 3.220 to address statutory changes to section 48.031, Florida Statutes, as amended by section 1, Chapter 2015-59, Laws of Florida. The effective date of Chapter 2015-59, Laws of Florida, is July 1, 2015. The legislative amendments of section 48.031(3)(b), Florida Statutes, allow a criminal witness subpoena to be “posted by a person authorized to serve process at the witness’s residence if one attempt to serve the subpoena has failed.” (*See* Appendix G.) The CPRC approved an amendment to subdivision (h)(1) to include a reference to section 48.031, Florida Statutes, in the fifth sentence of the subdivision. The amendment to Rule 3.220 was not published as this law went into effect July 1, 2015, and the Committee wished to take action as soon as possible.

The CPRC proposed an amendment to Rule 3.220(h) in its three-year cycle report, currently pending before the Court in SC15-177 *In Re: Amendments to the Florida Rules of Criminal Procedure*. The amendments from the three-year cycle report are indicated in double strike through in Appendix B and Appendix C.

**RULE 3.781. SENTENCING HEARING TO CONSIDER THE IMPOSITION OF A LIFE SENTENCE FOR JUVENILE OFFENDERS**

Chapter 2014-220, Laws of Florida, amends section 921.1401, Florida Statutes, and requires the consideration of specific factors when determining whether a life sentence is an appropriate sentence for a juvenile convicted of a capital felony. (*See* Appendix F.) The effective date of Chapter 2014-220, Laws of Florida, is July 1, 2014.

Section 921.1401, Florida Statutes, as amended by section 2, Chapter 2014-220, Laws of Florida, allows the court to conduct a separate sentencing hearing to determine if life imprisonment, or a term of years equal to life imprisonment, is the appropriate sentence for a juvenile convicted of an offense described in sections 775.082(1)(b), 775.082(3)(a)5., 775.082(3)(b)2., or 775.082(3)(c), Florida Statutes.

In response to these legislative amendments, the Criminal Procedure Rules Committee proposes a new rule to detail the procedure for an evidentiary hearing and the required specific findings prior to imposing a life sentence or a term of years equal to a life sentence.

The CPRC's proposed new rule includes subdivisions on application of the rule, the procedure for the evidentiary hearing, and the required findings. Recommended subdivision (a) states that the procedure in this rule applies to offenses committed after July 1, 2014, for which the sentence can result in life imprisonment or a term of years equal to life imprisonment. The subdivision also allows this procedure to be used "for resentencing any juvenile offender whose sentence is determined to be unconstitutional pursuant to the United States Supreme Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012) or *Graham v. Florida*, 560 U.S. 48 (2010)." The Committee believes that this will comply with the Court's opinions in *Falcon v. State*, 162 So. 3d 954 (Fla. 2015); *Horsley v. State*, 160 So. 3d 393 (Fla. 2015); *Gridine v. State*, 40 Fla. L. Weekly S149 (Fla. Mar. 19, 2015); *Henry v. State*, 40 Fla. L. Weekly S147 (Fla. Mar. 19, 2015).

Proposed subdivision (b) provides that "the sentencing court shall order a sentencing hearing to be held pursuant to rules 3.720 and 3.721." The State and the defendant are allowed to present relevant evidence. Subdivision (b) also provides guidance on what constitutes relevant evidence for this proceeding. Both sides are also permitted to "present evidence relevant to whether or not the defendant killed, intended to kill, or attempted to kill the victim."

Suggested subdivision (c) requires the court to "make specific findings on the record that all relevant factors have been reviewed and considered by the court prior to imposing a sentence of life imprisonment or a term of years equal to life imprisonment." The subdivision also requires, in capital cases, that the court consider whether the defendant has a previous conviction for specified offenses when determining eligibility for a sentence review hearing. Additionally, the written findings must be included in the commitment packet for the Department of Corrections.

**RULE 3.802. REVIEW OF SENTENCES FOR JUVENILE OFFENDERS**

The amendments to section 921.1402, Florida Statutes, provide for review of lengthy sentences and require written findings to determine if a person is eligible

for sentence modification under the statute. The effective date of Chapter 2014-220, Laws of Florida, is July 1, 2014. (*See* Appendix F.)

Section 921.1402, Florida Statutes, as amended by section 3, Chapter 2014-220, Laws of Florida, allows for a juvenile sentenced under section 775.082(1)(b)1., Florida Statutes, to have their sentence reviewed. The amendments to section 921.1402, Florida Statutes, also detail which court has jurisdiction to conduct the sentencing review hearing, and the factors the court should consider when determining whether to modify the juvenile offender's sentence.

In response to the legislative amendments, the Criminal Procedure Rules Committee proposes a new rule to detail the process for applying for a sentence review hearing; including when an application can be filed, the required contents of the application, and which court has jurisdiction to conduct the sentence review hearing. The CPRC's proposed new rule includes subdivisions on who may apply, when to file, the contents of application, the procedure for the evidentiary hearing, disposition of the application if filed prematurely, successive applications, and jurisdiction of the sentencing court.

Subdivision (a) details how a prisoner requests a review. Recommended subdivisions (b)(1)–(b)(3) provide guidance on the timing for filing an application. Proposed subdivisions (c)(1)–(c)(5) detail the items and information that must be included in the application such as a copy of the judgment and sentence, the relief sought, if previous applications have been filed, a brief statement of the facts in support of the application, and a statement that the applicant has not been convicted of specified offenses detailed in subdivision (c)(5).

Suggested subdivision (d) states that “the juvenile offender is entitled to be represented by counsel at the review hearing.” Additionally, this subdivision details the disposition of a premature application. Proposed subdivisions (d)(1)(A)–(d)(1)(J) list the factors that the court should consider during the sentence review hearing. Subdivision (d)(2) provides for modification of the sentence if the court determines that a juvenile offender has been rehabilitated. This subdivision requires the court to enter a written statement if the juvenile offender has not demonstrated rehabilitation.

Proposed subdivisions (e)(1)–(e)(2) address successive applications. A second or successive application is permitted if “the initial application was denied as premature” or if pursuant to statute “the initial application as submitted by a

juvenile offender sentenced to a term of 20 years or more [ ] and more than 10 years has elapsed since the initial sentence review hearing.”

As proposed by CPRC, subdivision (f) provides that the sentencing court shall retain jurisdiction for the sentence review hearing.

**RULE 3.989. AFFIDAVIT, PETITION, AND ORDER TO EXPUNGE OR SEAL FORMS**

The Court previously approved amendments to Florida Rule of Criminal Procedure 3.989 to address the expunction of criminal history records for victims of human trafficking. (*See In re Amendments to the Florida Rules of Criminal Procedure*, 137 So. 3d 1015 (Fla. 2014).) However, the Committee recently discovered an incorrect statutory citation in the caption of subdivision (g). Section 943.0583, Florida Statutes, was amended by section 2, Chapter 2013-98, and provides for the expunction of a criminal history record for victims of human trafficking.

John Booth brought the incorrect statutory reference in this subdivision to the CPRC’s attention. The CPRC unanimously agreed to propose deleting the reference to section 943.0585, Florida Statutes, and in its place reference 943.0583, Florida Statutes. The corrected caption would read: “Order to Expunge, Human Trafficking Victim, Under section 943.0583, Florida Statutes, and Florida Rules of Criminal Procedure 3.692.” This proposed amendment has not been published as the Committee wished to take corrective action as soon as possible. Chapters 2013-98 and 2013-99, Laws of Florida, became effective January 1, 2014.

Additionally, several editorial changes are suggested for this rule. In subdivision (a), the Committee suggests adding a comma to the case style before “Defendant/Petitioner” to be consistent with the following subdivisions. In subdivision (d), the signature block is amended to require an e-mail address. In subdivision (e), the first editorial suggestion is to add a line below Defendant/Petitioner for consistency with the other subdivisions in the rule. Also in subdivision (e), the Committee suggests deleting the five dots before 943.0583 in the first paragraph and in the fourth paragraph before “expunge.” Lastly in subdivision (e), “personally known” and “My commission expires:” should be added below the signature block to make the provision consistent with the rest of the rule.

**RULE 9.140. APPEAL PROCEEDINGS IN CRIMINAL CASES**

The Appellate Court Rules Committee proposes amending Florida Rule of Appellate Procedure 9.140(b)(1)(D) to include a reference to new Rule 3.802. The proposed amendment would allow a defendant to appeal an order denying relief under Rule 3.802. A minor, editorial, change is made to subdivision (f)(6)(A) to add a hyphen to “60-day period” in the last sentence of the subdivision.

WHEREFORE, the Criminal Procedure Rules Committee and the Appellate Court Rules Committee respectfully request that the Court amend the Florida Rules of Criminal Procedure and Florida Rule of Appellate Procedure 9.140 as outlined in this report.

Respectfully submitted on August 28, 2015.

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was furnished by e-mail, on August 28, 2015, to:

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## **CERTIFICATE OF COMPLIANCE**

I certify that these rules were read against *West's Florida Rules of Court—State* (2015 Edition) and *In re: Amendments to the Florida Rules of Criminal Procedure*, 137 So. 3d 1015 (Fla. 2014).

I certify that this report was prepared in compliance with the font requirements of Fla. R. App. P. 9.210(a)(2).

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